Request for Comments

Persons interested in these petitions are encouraged to submit comments via e-mail to ''*comments@msha.gov*,'' or on a computer disk along with an original hard copy to the Office of Standards, Regulations, and Variances, Mine Safety and Health Administration, 4015 Wilson Boulevard, Room 627, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before February 11, 2002. Copies of these petitions are available for inspection at that address.

Dated at Arlington, Virginia this 31st day of December 2001.

David L. Meyer,

Director, Office of Standards, Regulations, and Variances.

[FR Doc. 02–619 Filed 1–9–02; 8:45 am]

BILLING CODE 4510–43–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 25355, 812–12102]

The Charles Schwab Family of Funds, et. al; Notice of Application

January 4, 2002.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 (''Act'') granting an exemption from sections 18(f) and 21(b) of the Act, under section 12(d)(1)(J) of the Act granting an exemption from section 12(d)(1) of the Act; under sections 6(c) and 17(b) of the Act granting an exemption from section 17(a) of the Act; and under section 17(d) of the Act and rule 17d–1 under the Act to permit certain joint transactions.

SUMMARY OF THE APPLICATION: Applicants request an order that would permit certain registered open-end management investment companies to participate in a joint lending and borrowing facility. The requested order also would amend a condition of a prior order (''Order'').[1]

APPLICANTS: The Charles Schwab Family of Funds, Schwab Investments, Schwab Capital Trust, Schwab Annuity Portfolios (each a ''Trust'' and together the ''Trusts'') for and on behalf of each of their series now or hereafter existing (the ''Schwab Funds''), Charles Schwab Investment Management, Inc. (''CSIM''), and any other existing or future registered open-end management investment company or series thereof that is advised or sub-advised by CSIM or a person controlling, controlled by, or under common control with CSIM and that is part of the ''same group of investment companies'' as the Schwab Funds (together with the Schwab Funds, the ''Funds'').

FILING DATES: The application was filed on May 17, 2000 and amended on January 3, 2002.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on January 29, 2002, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, NW., Washington, D.C. 20549–0609. Applicants, 101 Montgomery Street, 101KNY–14, San Francisco, California 94104.

FOR FURTHER INFORMATION CONTACT: Janet M. Grossnickle, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 (tel. 202–942–8090).

Applicants' Representations

1. Each of the Trusts is registered under the Act as an open-end management investment company and organized as a Massachusetts business trust.[2] CSIM is registered under the Investment Advisers Act of 1940 and serves as investment adviser for each of the Funds.

2. Some Funds may lend money to banks or other entities by entering into repurchase agreements or purchasing other short-term investments. Under a prior order, the Funds can pool their uninvested daily cash balances into joint accounts (''Joint Accounts'') that invest in repurchase agreements and other money market instruments.[3] Other Funds may borrow money from the same or other banks for temporary purposes to satisfy redemption requests or to cover unanticipated cash shortfalls such as a trade ''fail,'' in which cash payment for a security a Fund has sold has been delayed.

3. If a Fund were to draw down on its line of credit or incur an overdraft with its custodian bank, the Fund would pay interest on the borrowed cash at a rate which would be significantly higher than the rate that other non-borrowing Funds would earn on investments in repurchase agreements and other short-term instruments of the same maturity as the bank loan. Applicants believe this differential represents the bank's profit. Other bank loan arrangements, such as committed lines of credit, would require the Funds to pay substantial commitment fees in addition to the interest rate to be paid by the borrowing Fund.

4. Applicants request an order that would permit the Funds to enter into interfund lending agreements (''Interfund Lending Agreements'') under which the Funds would lend and borrow money for temporary purposes directly to and from each other through a credit facility (''Interfund Loan''). Applicants state that the proposed credit facility would reduce the Funds' borrowing costs and enhance their ability to earn higher rates of interest on investment of their short-term cash balances. Although the proposed credit facility would reduce the Funds' need to borrow from banks, the Funds would be free to establish committed lines of credit or other borrowing arrangements with banks. The Funds also would continue to maintain any overdraft protection currently provided by the custodian bank and their uncommitted lines of credit with various banks.

5. Applicants anticipate that the credit facility would provide a borrowing Fund with significant savings when the cash position of the Fund is insufficient to meet temporary cash requirements. This situation could arise when redemptions exceed expected volumes and the Fund has insufficient

[1] *The Charles Schwab Family of Funds, et al.,* Investment Company Act Release Nos. 24067 (October 1, 1999) (notice) and 24113 (October 27, 1999) (order).

[2] Each existing Fund that currently intends to rely on the requested order is named as an applicant. Any Fund that relies on the requested relief in the future will do so only in compliance with the terms and conditions of the application.

[3] The Charles Schwab Family of Funds, et al., Investment Company Act Release No. 23679 (February 4, 1999) (notice) and 23723 (March 3, 1999) (order).

cash to satisfy redemptions. When the Funds liquidate portfolio securities to meet redemption requests, which normally are effected immediately, they often do not receive payment in settlement for up to three days (or longer for certain foreign transactions). The credit facility would provide a source of immediate, short-term liquidity pending settlement of the sale of portfolio securities.

6. Applicants also propose using the credit facility when a sale of securities ''fails'' due to circumstances such as a delay in the delivery of cash to the Fund's custodian or improper delivery instructions by the broker effecting the transaction. ''Sales fails'' may present a cash shortfall if the Fund has purchased securities using the proceeds from the securities sold. When the Fund experiences a cash shortfall due to a sales fail, the custodian typically extends temporary credit to cover the shortfall and the Fund incurs overdraft charges. Alternatively, the Fund could fail on its intended purchase due to lack of funds from the previous sale, resulting in additional cost to the Fund, or sell a security on a same day settlement basis, earning a lower return on the investment. Use of the credit facility under these circumstances would enable the Fund to have access to immediate short-term liquidity without incurring custodian overdraft or other charges.

7. While borrowing arrangements with banks will continue to be available to cover unanticipated redemptions and sales fails, under the proposed credit facility a borrowing Fund would pay lower interest rates than those offered by banks on short-term loans. In addition, Funds making short-term cash loans directly to other Funds would earn interest at a rate higher than they otherwise could obtain from investing their cash in repurchase agreements. Thus, applicants believe that the proposed credit facility would benefit both borrowing and lending Funds.

8. The interest rate charged to the Funds on any Interfund Loan (''Interfund Loan Rate'') would be the average of the ''Repo Rate'' and the ''Bank Loan Rate,'' both as defined below. The Repo Rate for any day would be the highest rate available to the Funds from investing in overnight repurchase agreements, either directly or through a Joint Account (''Repo Rate''). The Bank Loan Rate for any day would be calculated by CSIM each day an interfund loan is made according to a formula established by the Board of Trustees of each Trust (''Board'') designed to approximate the lowest interest rate at which bank short-term loans would be available to the Funds. The formula would be based upon a publicly available rate (e.g., Federal Funds plus 25 basis points) and would vary with this rate so as to reflect changing bank loan rates. Each Fund's Board periodically would review the continuing appropriateness of using the publicly available rate, as well as the relationship between the Bank Loan Rate and current bank loan rates that would be available to the Funds. The initial formula and any subsequent modifications to the formula would be subject to the approval of each Fund's Board.

9. The credit facility would be administered by employees of CSIM, including representatives of the Fund Administration and Financial Analysis Department and/or representatives of the Portfolio Management and Research Department, who are not portfolio managers (''Interfund Lending Team''). Under the proposed credit facility, the portfolio managers for each participating Fund may provide standing instructions to participate daily as a borrower or lender. The Interfund Lending Team on each business day would collect data on the uninvested cash and borrowing requirements of all participating Funds from the Funds' custodians. Applicants expect far more available uninvested cash each day than borrowing demand. Once it determines the aggregate amount of cash available for loans and borrowing demand, the Interfund Lending Team would allocate loans among borrowing Funds without any further communication from portfolio managers. After allocating cash for Interfund Loans, CSIM would invest any remaining cash in accordance with the standing instructions of portfolio managers or return remaining amounts for investment to the Funds. Any money market Funds typically would not participate as borrowers because they rarely need to borrow cash to meet redemptions.

10. The Interfund Lending Team would allocate borrowing demand and cash available for lending among the Funds on what the Interfund Lending Team believes to be an equitable basis, subject to certain administrative procedures applicable to all Funds, such as the time of filing requests to participate, minimum loan lot sizes, and the need to minimize the number of transactions and associated administrative costs. To reduce transaction costs, each loan normally would be allocated in a manner intended to minimize the number of Funds necessary to complete the loan transaction. The method of allocation and related administrative procedures would be approved by each Fund's Board, including a majority of trustees who are not ''interested persons'' of the Fund, as defined in section 2(a)(19) of the Act (''Independent Trustees''), to ensure both borrowing and lending Funds participate on an equitable basis.

11. CSIM would (i) monitor the interest rates charged and other terms and conditions of the Interfund Loans, (ii) ensure compliance with each Fund's investment policies and limitations, (iii) ensure equitable treatment of each Fund, and (iv) make quarterly reports to the Board concerning any transactions by the Funds under the credit facility and the Interfund Loan Rates.

12. CSIM would administer the credit facility as part of its duties under its existing advisory contract with each Fund and would receive no additional fee as compensation for its services. CSIM may, however, collect reimbursement for standard pricing, recordkeeping, bookkeeping and accounting fees applicable to repurchase and lending transactions generally, including transactions effected through the credit facility. Fees would be no higher than those applicable for comparable bank loan transactions.

13. A Fund's participation in the credit facility must be consistent with its investment policies and limitations and organizational documents. The statement of additional information of each Fund discloses the individual borrowing and lending limitations of the Fund. Each Fund will notify shareholders of its intended participation in the proposed credit facility prior to relying on any relief granted pursuant to the application. The statement of additional information of each Fund participating in the interfund lending arrangements will disclose all material information about the credit facility.

14. In connection with the credit facility, applicants request an order under section 6(c) of the Act granting an exemption from sections 18(f) and 21(b) of the Act, under section 12(d)(1)(J) of the Act granting an exemption from section 12(d)(1) of the Act; under sections 6(c) and 17(b) of the Act granting an exemption from section 17(a) of the Act; and under section 17(d) and rule 17d–1 under the Act to permit certain joint arrangements.

15. Applicants state that certain Funds and other registered open-end investment companies operate in reliance on the Order. Applicants state that one of the conditions of the Order is that Underlying Funds, as defined in the Order, cannot acquire securities of any other investment company in excess

of the limits contained in section 12(d)(1) of the Act. Applicants request that if the requested relief is granted, this condition be amended to permit the Underlying Funds to engage in interfund borrowing and lending transactions.

Applicants' Legal Analysis

1. Section 17(a)(3) generally prohibits any affiliated person, or affiliated person of an affiliated person, from borrowing money or other property from a registered investment company. Section 21(b) generally prohibits any registered management investment company from lending money or other property to any person if that person controls or is under common control with the company. Section 2(a)(3)(C) of the Act defines an ''affiliated person'' of another person, in part, to be any person directly or indirectly controlling, controlled by, or under common control with, the other person. Applicants state that the Funds may be under common control by virtue of having CSIM as their common investment advisor.

2. Section 6(c) provides that an exemptive order may be granted where an exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Section 17(b) authorizes the Commission to exempt a proposed transaction from section 17(a) provided that the terms of the transaction, including the consideration to be paid or received, are fair and reasonable and do not involve overreaching on the part of any person concerned, and the transaction is consistent with the policy of the investment company as recited in its registration statement and with the general purposes of the Act. Applicants believe that the proposed arrangements satisfy these standards for the reasons discussed below.

3. Applicants submit that sections 17(a)(3) and 21(b) of the Act were intended to prevent a party with strong potential adverse interests to and some influence over the investment decisions of a registered investment company from causing or inducing the investment company to engage in lending transactions that unfairly inure to the benefit of such party and that are detrimental to the best interests of the investment company and its shareholders. Applicants assert that the proposed credit facility transactions do not raise these concerns because: (a) CSIM would administer the program as a disinterested fiduciary; (b) all Interfund Loans would consist only of uninvested cash reserves that the Funds otherwise would invest in short-term repurchase agreements or other short-term instruments either directly or through a Joint Account; (c) the Interfund Loans would not involve a greater risk than such other investments; (d) the lending Funds would receive interest at a rate higher than they could obtain through such other investments; and (e) the borrowing Funds would pay interest at a rate lower than otherwise available to them under their bank loan agreements and avoid the up-front commitment fees associated with committed lines of credit. Moreover, applicants believe that the other conditions in the application would effectively preclude the possibility of any Fund obtaining an undue advantage over any other Fund.

4. Section 17(a)(1) generally prohibits an affiliated person of a registered investment company, or an affiliated person of an affiliated person, from selling any securities or other property to the company. Section 12(d)(1) of the Act generally makes it unlawful for a registered investment company to purchase or otherwise acquire any security issued by any other investment company except in accordance with the limitations set forth in that section. Applicants believe that the obligation of a borrowing Fund to repay an Interfund Loan may constitute a security under sections 17(a)(1) and 12(d)(1). Section 12(d)(1)(J) provides that the Commission may exempt persons or transactions from any provision of section 12(d)(1) if and to the extent such exception is consistent with the public interest and the protection of investors. Applicants contend that the standards under sections 6(c), 17(b), and 12(d)(1) are satisfied for all the reasons set forth above in support of their request for relief from sections 17(a)(3) and 21(b) and for the reasons discussed below.

5. Applicants state that section 12(d)(1) was intended to prevent the pyramiding of investment companies in order to avoid imposing on investors additional and duplicative costs and fees attendant upon multiple layers of investment companies. Applicants submit that the credit facility does not involve these abuses. Applicants note that there will be no duplicative costs or fees to any Fund or its shareholders, and that CSIM will receive no additional compensation for its services in administering the credit facility. Applicants also note that the purpose of the proposed credit facility is to provide economic benefits for all the participating Funds.

6. Section 18(f)(1) prohibits open-end investment companies from issuing any senior security except that a company is permitted to borrow from any bank; provided, that immediately after any such borrowing, there is an asset coverage of at least 300 per cent for all borrowings of the company. Under section 18(g) of the Act, the term ''senior security'' includes any bond, debenture, note or similar obligation or instrument constituting a security and evidencing indebtedness. Applicants request relief from section 18(f)(1) to the limited extent necessary to implement the credit facility (because the lending Funds are not banks).

7. Applicants believe that granting relief under section 6(c) is appropriate because the Funds would remain subject to the requirement of section 18(f)(1) that all borrowings of the Fund, including combined interfund and bank borrowings, have at least 300% asset coverage. Based on the conditions and safeguards described in the application, applicants also submit that to allow the Funds to borrow from other Funds pursuant to the proposed credit facility is consistent with the purposes and policies of section 18(f)(1).

8. Section 17(d) and rule 17d–1 generally prohibit any affiliated person of a registered investment company, or affiliated person of an affiliated person, when acting as principal, from effecting any joint transactions in which the company participates unless the transaction is approved by the Commission. Rule 17d–1 provides that in passing upon applications for relief under section 17(d), the Commission will consider whether the participation of a registered investment company in a joint enterprise on the basis proposed is consistent with the provisions, policies, and purposes of the Act and the extent to which the company's participation is on a basis different from or less advantageous than that of other participants.

9. Applicants submit that the purpose of section 17(d) is to avoid overreaching by and unfair advantage to the insiders. Applicants believe that the credit facility is consistent with the provisions, policies and purposes of the Act in that it offers both reduced borrowing costs and enhanced returns on loaned funds to all participating Funds and their shareholders. Applicants note that each Fund would have an equal opportunity to borrow and lend on equal terms consistent with its investment policies and limitations. Applicants therefore believe that each Fund's participation in the credit facility will be on terms that are no different from or less advantageous than that of other participating Funds.

10. Applicants also request relief under section 12(d)(1)(J) of the Act for

an exemption from sections 12(d)(1)(A) and (B) of the Act, and under sections 6(c) and 17(b) of the Act for an exemption from section 17(a) of the Act to the extent necessary to amend the Order. Applicants submit that the Order should be modified solely to the extent necessary to allow an Underlying Fund to engage in interfund borrowing and lending transactions. Applicants believe that the proposed relief satisfies the standards of sections 12(d)(1)(J), 6(c) and 17(b). Applicants state that there will be no duplicative costs or fees to any of the Funds or their shareholders, and that such participation will not create any of the abuses to which section 12(d)(1)(A) is addressed.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. The interest rates to be charged to the Funds under the credit facility will be the average of the Repo Rate and the Bank Loan Rate.

2. On each business day, CSIM will compare the Bank Loan Rate with the Repo Rate and will make cash available for Interfund Loans only if the Interfund Loan Rate is (a) more favorable to the lending Fund than the Repo Rate, and (b) more favorable to the borrowing Fund than the Bank Loan Rate.

3. If a Fund has outstanding borrowings, any Interfund Loans to the Fund (a) will be at an interest rate equal to or lower than any outstanding bank loan, (b) will be secured at least on an equal priority basis with at least an equivalent percentage of collateral to loan value as any outstanding bank loan that requires collateral, (c) will have a maturity no longer than any outstanding bank loan (and in any event not over seven days), and (d) will provide that, if an event of default occurs under any agreement evidencing an outstanding bank loan to the Fund, that event of default will automatically (without need for action or notice by the lending Fund) constitute an immediate event of default under the Interfund Lending Agreement entitling the lending Fund to call the Interfund Loan (and exercise all rights with respect to collateral, if any) and that such call will be made if the lending bank exercises its right to call its loan under its agreement with the borrowing Fund.

4. A Fund may make an unsecured borrowing through the credit facility if its outstanding borrowing from all sources immediately after the interfund borrowing total less than 10% its total assets, provided that if the Fund has a secured loan outstanding from any other lender, including but not limited to another Fund, the Fund's interfund borrowing will be secured on at least an equal priority basis with at least an equivalent percentage of collateral to loan value as any outstanding loan that requires collateral. If a Fund's total outstanding borrowings immediately after an interfund borrowing would be 10% or greater of its total assets, the Fund may borrow through the credit facility on a secured basis only. A Fund may not borrow through the credit facility or from any other source if its total borrowings immediately after the interfund borrowing would exceed the limits in section 18 of the Act.

5. Before any Fund that has outstanding interfund borrowings may, through additional borrowings, cause its outstanding borrowings from all sources to equal or exceed 10% of its total assets, the Fund must first secure each outstanding Interfund Loan by the pledge of segregated collateral with a market value at least equal to 102% of the outstanding principal value of the loan. If the total outstanding borrowings of a Fund with outstanding Interfund Loans equals or exceeds 10% of its total assets for any other reason (such as a decline in net asset value or because of shareholder redemptions), the Fund will within one business day thereafter (a) repay all its outstanding Interfund Loans, (b) reduce its outstanding indebtedness to less than 10% of its total assets, or (c) secure each outstanding Interfund Loan by the pledge of segregated collateral with a market value at least equal to 102% of the outstanding principal value of the loan until the Fund's total outstanding borrowings cease to equal or exceed 10% of its total assets, at which time the collateral called for by this condition (5) shall no longer be required. Until each Interfund Loan that is outstanding at any time that a Fund's total outstanding borrowings equal or exceed 10% is repaid, or the Fund's total outstanding borrowings cease to equal or exceed 10% of its total assets, the Fund will mark the value of the collateral to market each day and will pledge additional collateral as necessary to maintain the market value of the collateral that secures each outstanding Interfund Loan at least equal to 102% of the outstanding principal value of the loan.

6. No Fund may lend to another Fund through the credit facility if the loan would cause its aggregate outstanding loans through the credit facility to exceed 15% of the lending Fund's current net assets at the time of the loan.

7. A Fund's Interfund Loans to any one Fund shall not exceed 5% of the lending Fund's net assets.

8. The duration of Interfund Loans will be limited to the time required to receive payment for securities sold, but in no event more than seven days. Loans effected within seven days of each other will be treated as separate loan transactions for purposes of this condition.

9. Except as set forth in this condition, no Fund may borrow through the credit facility unless the Fund has a policy that prevents the Fund from borrowing for other than temporary or emergency purposes. In the case of a Fund that does not have such a policy, the Fund's borrowings through the credit facility, as measured on the day when the most recent loan was made, will not exceed the greater of 125% of the Fund's total net cash redemptions or 102% of sales fails for the preceding seven calendar days.

10. Each Interfund Loan may be called on one business day's notice by a lending Fund and may be repaid on any day by a borrowing Fund.

11. A Fund's participation in the credit facility must be consistent with its investment policies and limitations and organizational documents.

12. The Interfund Lending Team will calculate total Fund borrowing and lending demand through the credit facility, and allocate loans on an equitable basis among the Funds without the intervention of any portfolio manager of the Funds. The Interfund Lending Team will not solicit cash for the credit facility from any Fund or prospectively publish or disseminate loan demand data to portfolio managers. CSIM will invest any amounts remaining after satisfaction of borrowing demand in accordance with the standing instructions from portfolio managers or return remaining amounts for investment directly by the Funds.

13. CSIM will monitor the interest rates charged and the other terms and conditions of the Interfund Loans and will report to the Boards quarterly concerning the participation of the Funds in the credit facility and the terms and other conditions of any extensions of credit thereunder.

14. Each Trust's Board, including a majority of the Independent Trustees: (a) will review no less frequently than quarterly each Fund's participation in the credit facility during the preceding quarter for compliance with the conditions of any order permitting the transactions; (b) will establish the Bank Loan Rate formula used to determine the interest rate on Interfund Loans, approve any modifications thereto, and review no less frequently than annually the continuing appropriateness of the Bank Loan Rate formula; and (c) will

review no less frequently than annually the continuing appropriateness of each Fund's participation in the credit facility.

15. In the event an Interfund Loan is not paid according to its terms and the default is not cured within two business days from its maturity or from the time the lending Fund makes a demand of payment under the provisions of the Interfund Lending Agreement, CSIM will promptly refer the loan for arbitration to an independent arbitrator selected by the Boards of the Funds involved in the loan who will serve as arbitrator of disputes concerning Interfund Loans.[4] The arbitrator will resolve any problems promptly, and the arbitrator's decision will be binding on both Funds. The arbitrator will submit at least annually a written report to the Boards setting forth a description of the nature of any dispute and the actions taken by the Funds to resolve the dispute.

16. Each Fund will maintain and preserve for a period of not less than six years from the end of the fiscal year in which any transaction under the credit facility occurred, the first two years in an easily accessible place, written records of all such transactions setting forth a description of the terms of the transaction, including the amount, the maturity and rate of interest on the loan, the rate of interest available at the time on short-term repurchase agreements and bank borrowings, and other information presented to the Boards in connection with the review required by conditions 13 and 14.

17. CSIM will prepare and submit to the Boards for review, an initial report describing the operations of the credit facility and the procedures to be implemented to ensure that all Funds are treated fairly. After the commencement of operations of the credit facility, CSIM will report on the operations of the credit facility at each Board's quarterly meetings.

In addition, for two years following the commencement of the credit facility, the independent public accountant for each Fund shall prepare an annual report that evaluates CSIM's assertions that it has established procedures reasonably designed to achieve compliance with the conditions of the order. The report shall be prepared in accordance with the Statements on Standards for Attestation Engagements No. 3 and filed pursuant to Item 77Q3 of Form N–SAR. In particular, the report shall address procedures designed to achieve the following objectives: (a) That the Interfund Loan Rate will be higher than the Repo Rate, but lower than the Bank Loan Rate; (b) compliance with the collateral requirements as set forth in the Application; (c) compliance with the percentage limitations on interfund borrowing and lending; (d) allocation of interfund borrowing and lending demand in an equitable manner and in accordance with procedures established by the Boards; and (e) that the interest rate on any Interfund Loan does not exceed the interest rate on any third party borrowings of a borrowing Fund at the time of the Interfund Loan.

After the final report is filed, the Fund's external auditors, in connection with their Fund audit examinations, will continue to review the operation of the credit facility for compliance with the conditions of the application and their review will form the basis, in part, of the auditor's report on internal accounting controls in Form N–SAR.

18. No Fund will participate in the credit facility upon receipt of requisite regulatory approval unless it has fully disclosed in its statement of additional information all material facts about its intended participation.

Applicants also agree that condition number 12 to the Order will be modified to read as follows:

No Underlying Fund will acquire securities of any other investment company in excess of the limits set forth in Section 12(d)(1)(A) of the 1940 Act, except to the extent that the Underlying Fund has obtained exemptive relief from the Commission permitting it to (a) purchase shares of an affiliated money market fund for short-term cash management purposes; or (b) engage in interfund borrowing and lending transactions.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–600 Filed 1–9–02; 8:45 am]

BILLING CODE 8010–01–P

[4] If the dispute involves Funds with separate Boards, the Trustees of each Fund will select an independent arbitrator that is satisfactory to each Fund.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45235; File No. SR–Amex–2001–100]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto by the American Stock Exchange LLC Relating to the Initial and Annual Listing Fees, Fees for Listing Additional Shares and the One-Time Charge for Listing Shares Issued in Connection With Acquisition of a Listed Company by an Unlisted Company

January 4, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 10, 2001, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange filed Amendment No. 1 to the proposed rule change on December 26, 2001.[3] The Exchange filed Amendment No. 2 to the proposed rule change on December 26, 2001.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Sections 140, 141, 142, 144 and 341 of the Amex *Company Guide* relating to the Exchange issuer initial listing fee,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Michael J. Ryan, Executive Vice President and General Counsel, Amex, to Nancy Sanow, Assistant Director, Division of Market Regulation (''Division''), Commission, dated December 13, 2001 (''Amendment No. 1''). In Amendment No. 1, the Amex requested that Commission grant accelerated approval to the proposed rule change.

[4] *See* letter from Michael J. Ryan, Executive Vice President and General Counsel, Amex, to Marc McKayle, Special Counsel, Division, Commission, dated December 20, 2001 (''Amendment No. 2''). In Amendment No. 2, the Amex stated that it seeks to implement the revised Annual Fee schedule under Section 141 as of January 1, 2002 and the revisions to Sections 140, 142, 144 and 341 upon Commission approval. In addition, the Amex made a minor correction to the proposed rule change, clarified that it will not reimburse part of the annual fee paid under Section 141 to issuers whose securities are removed from listing and registration for the portion of the year remaining after the date of removal, and added additional reasons for amending the Refund of Listing Fees under Section 144.